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August 23, 1984

Mr. Arlan S. MacKnight
Deputy Bank Commissioner
Banking Department
97 North Main Street
Concord, New Hampshire 03301

Re: Conflict Between RSA 358-K and RSA 361-A

Dear Mr. MacKnight:

In your letter of November 28, 1983, you requested an opinion whether RSA 358-K conflicted with RSA 361-A. For the following reasons, we conclude that these statutes are not in conflict.

Chapter 358-K, Regulation of Consumer Credit Transactions, generally applies to consumer credit sales and loans. RSA 361-A regulates retail installment sales of motor vehicles. In your opinion request, you identified three areas of possible conflict between these two statutes. Each of these three areas will be addressed separately.

The first possible conflict relates to RSA 358-K:3 and RSA 361-A:7,V. RSA 358-K:3 provides that no interest shall be added on closed-end consumer credit transactions in advance. RSA 361-A:7,V allows the retail seller in an installment contract to collect a delinquency and collection charge. The issue here is whether delinquency and collection charges are equivalent to interest. Under federal regulations, "interest" is only one of several components which may comprise the finance charge, 12 CFR § 226.4(b)(1), whereas charges for late payments, delinquency, default or similar occurrences are not



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components of the finance charge, 12 CFR § 226.4(c)(2). Consequently, "interest" cannot be equated with charges imposed for unanticipated late payments. Simply stated, interest and late payments charges are two separate and distinct concepts. Therefore, there is no conflict between RSA 358-K:3 and RSA 361-A:7,V as RSA 358-K:3 does not prevent charging for late payments.

The second potential area of conflict pertains to a rebate or refund upon prepayment in full. Chapter 358-K is a general act regulating consumer credit transactions. This chapter provides that "the consumer shall not be entitled to any rebate of interest on prepayment in full." RSA 358-K:4. Chapter 361-A specifically deals with retail installment sales of motor vehicles, and provides for a refund credit of the finance charge on prepayment. RSA 361-A:9. It is the rule that where a general statute standing alone includes the same matter as the specific statute and thus conflicts with it, the specific statute is considered as an exception to the general statute whether it was passed before or after the general enactment. C. Sands, Statutes and Statutory Construction, § 51.05 (4th ed. 1973). Consequently, RSA 361-A can be construed as an exception to the general provisions of RSA 358-K.

Additionally, there is no indication that RSA 361-A was either expressly or impliedly repealed by the enactment of RSA 358-K. In 1977 RSA 358 was repealed, yet RSA 361-A remained intact. It is a well established rule of statutory interpretation that repeal by implication will not be presumed, for the aim of the rules of interpretation and construction is to give harmonious operation and effect to all of the acts upon a subject. C. Sands, Statutes and Statutory Construction, § 23.10 (4th ed. 1973).

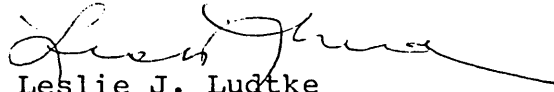
Therefore, where the installment sale involves a motor vehicle as defined in RSA 361-A:1,V, then RSA 361-A:9 will govern. In all other closed-end consumer credit transactions, RSA 358-K:4 will govern after June 30, 1985.

The final potential area of conflict which you identified pertains to the imposition of acquisition charges. An acquisition charge is not "interest," but rather, is a service charge which is fully earned by the lender upon processing the loan. Acquisition charges are not precluded by RSA 358-K:3 or 358-K:4, as RSA 358-K only regulates interest charges. In retail installment sales of motor vehicles, RSA 361-A:9 expressly provides for acquisition charges and therefore would govern in such transactions.

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I trust this has been responsive to your inquiry. If you have any further questions, please do not hesitate to contact me.

Very truly yours,


Leslie J. Ludtke
Assistant Attorney General
Division of Legal Counsel

LJL/smg
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